IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. .....

SAMUEL EVANS MASSENGILL, Petitioner

vs.

J. T. WILSON, Administrator of the Estate of Pearl Locklair, Deceased, Respondent

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BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The memorandum opinion of the District Judge appears in the Record at pp. 9 and 10. That Court held that the Statute of Limitations of one year prescribed by the Tennessee law was applicable; that respondent's suit was barred by the Statute of Limitations and judgment was accordingly entered dismissing it. (R. 10).

The opinion of the Circuit Court of Appeals is not reported but appears in the Record at pp. 16 to 20, as will be reported 124 Fed. (2d.)—

JURISDICTION

The judgment of the Circuit Court of Appeals sought to be reviewed was entered on January 9th, 1942. (R. 14).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13th, 1925, 28 U.S.C. 347(a).

It is believed that the following cases sustain the jurisdiction.

Claxon Company vs. Senton Electric Company,
313 U.S. 487.

Griffin vs. McCoach,
313 U.S. 498.

STATEMENT AND QUESTIONS PRESENTED

A concise statement of the matters involved and the questions presented are set out in the petition, and for brevity, will not be here repeated.

SPECIFICATION OF ERRORS

1—The Circuit Court of Appeals erroneously held that where a statutory cause of action is created and in the same Statute a limitation period for action is contained, that such limitation will be applied in the forum of a sister state, even though the period of limitation for like actions in the sister state is shorter, and the action is there barred.

2—The Circuit Court of Appeals erroneously held that in this case respondent's cause of action might be instituted in Tennessee within six years as provided by the South Carolina Statute, and erroneously failed to hold that respondent's time for suit was limited to twelve months as provided by the Tennessee Statute.

3—The Circuit Court of Appeals erroneously concluded that the Supreme Court of Tennessee had not rendered

any decision holding that the Statute of Limitations of the forum State would control causes of action arising in a foreign State.

4—The Circuit Court of Appeals erred in reversing the District Court and in remanding the case for further proceedings.

ARGUMENT

The question to be dealt with, in its essentiality, is whether the Tennessee Statute of Limitation of one year for bringing an action for damages for wrongful acts resulting in death bars an action for alleged wrongful acts causing death in the State of South Carolina. Succinctly stated, does the law of the forum control, or the law of the sister State?

I

THE SOUTH CAROLINA STATUTE IS A LIMITATION ON TIME FOR INSTITUTING SUIT AND IS NOT SUCH A PART OF THE RIGHT AS WILL FOLLOW THE CAUSE OF ACTION TO A FOREIGN STATE TO THE EXCLUSION OF THE LIMITATION OF SUCH STATE GOVERNING THE SAME CAUSE OF ACTION.

Section 413 of Title 5 of Chapter 15 of the Code of Laws for South Carolina for the year 1932, which is applicable provides:

"All such actions must be brought within six years, from the death of such person, etc." It is to be noted that this prescribes a **time for bringing an action on a right created by Section 411, 412.** It does not accord a right **upon condition** that the suit be instituted in such time. Similar language appears in Statutes of various

States and has been held to be a time limitation and not a part of the right. We are aware, of course, that decisions of State Courts are not controlling, but are only persuasive.

We think two cases construing almost identical language are so logical and well considered as to merit citation.

In the case of Brookshire vs. Burkhart, 141 Oklahoma, I, 283, Pac., 571, as reported in 67 A.L.R. 1059, the Court had under consideration the nature of the limitation imposed under the statutory law. Section 824, Oklahoma Comp. Stat. 1921, provides:

> "When death of one is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter if the former might have maintained an action had he lived against the latter for an injury for the same act or omission. **The action must be commenced within two years."** (Italics ours.)

In discussing the proposition of whether the language "the action must be commenced within two years," was a proviso in the statute creating the right so as to govern the existence of the right itself, or was simply an ordinary statute of limitation, the Supreme Court of Oklahoma makes a very thorough analysis of the applicable principles. After doing so, it was held that such language "is a statute of limitation and not in the form of a proviso imposed upon the exercise of the right of action granted." Brookshire vs. Burkhart, supra.

It is to be noted in this case that the language is contained in the same statute creating the right and is almost identical with the language of Section 413 of the South Carolina Code here under consideration.

In the case of Sharrow vs. Inland Lines, 214 New York, 101, L. R.A. 1915E, 1192, the Supreme Court of that State had under consideration the statutory law of New York providing as follows:

> "The executor or administrator . . . of a decedent who has left him or her surviving a husband, wife, or next of kin, may maintain an action to recover damages for a wrongful act, neglect or default, by which the decedent's death was caused, against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof if death had not ensued. **Such an action must be commenced within two years after decedent's death.**" (Italics ours.)

After a very thorough analysis of the case, the Court held that the language "such an action must be commenced within two years after the decedent's death" is a limitation upon the remedy and not upon the right.

Again, it will be noted that the language is almost identical with the language of the South Carolina Limitation Statute.

In the case of Tieffenbrum vs. Flannery, 198 N.C. 397, the Supreme Court of North Carolina, in speaking of limitation statutes, states, "all Statutes of Limitations are essentially time clocks."

Statutes of Limitation are looked upon with favor and are not to be given strained construction so as to defeat their purpose. Pillow vs. Roberts, 54 U.S. 472; U.S. vs. Wilder, 80 U.S. 254.

This Court, early, has considered the nature of the Statute of Limitations.

In the case of M'ElMoyle vs. Cohen, 13 Peters, 327, this Court, considering the effect to be given the rights arising under the laws of other States when sought to be enforced in our State, and whether the limitation of the forum, or the limitation of the foreign State would control, has said:

> "Is it a plea that settles the right of a party on a contract or judgment, or one that bars the remedy? **What diversity of opinion there may be among jurists upon this point, we think it well settled to be a plea to the remedy**; and, consequently, that the lex fori must prevail. (Higgins vs. Scott, 2 Barn. & Adol, 413; Cowen R. 528, note 10; Id., 530; Van Ramsdyk v. Kane, 1 Gillis R. 371; LeRoy vs. Crowninshield, 2 Mason R. 351; British Linen Co. v. Drummond, 10 Barn & Cress, 903; De La Vega vs. Veanna 1 Barn & Adol. 284; De Couch vs. Savalier, 3 Johns, Ch. R. 190; Lincoln vs. Battalle, 6 Wend. R. 475; Gulick vs. Lodes, Green's New Jersey Rep. 68; 3 Burge's Com. on Col. and For. Laws, 883). The statute of Georgia is 'that actions of debt on judgments obtained must be brought within five years after the judgment obtained.' It would be strange, if in the now well understood rights of nations to organize their judicial tribunals according to their notions of policy, it should be conceded to them in every other respect than that of prescribing the time within which suits shall be litigated in their courts." (Italics ours.)

Again, in the case of Great Western Telegraph Company vs. Purdy, 162 U.S. 339, this Court specifically holds that the Statute of Limitation is controlled by the laws of the forum wherein it was said:

> "The limitation of actions is governed by the lex fori, and is controlled by the legislation of

> the state in which action is brought, as construed by the highest court of that state, **even if the legislative act or the judicial construction differs from that prevailing in other jurisdictions.**" M'El-Moyle vs. Cohen, 38 U.S. 13 Pet. 312; (10; 177); Hauserman vs. Blunt, 147 U.S. 647 (37:316); Metcalf vs. Eatertown, 153 U.S. 671 (38: 862); Balkam vs. Woodstock Iron Co. 154 U.S. 177 (38: 853). "Neither the statutes nor the decisions of the state of Iowa upon this subject have made any discrimination against the citizens, the contracts, or the judgment of other states, or against any right asserted under the Constitution or laws of the United States." (Italics ours.)

In the case of Rosenzweig vs. Heller, 302 Pa., 279, the Supreme Court of that State very pertinently held,

> "The right is not gone until it is lost under the law creating it, but the Statute of the forum shows the local policy as to the time in which such actions are to be brought."

In the case of Hutchings vs. Lamson, supra, dealing with the same subject, it is stated:

> "It would involve serious and possibly absurd consequences if it were established that a right of action created and governed by the law of Kansas could be enforced in Illinois after the time when by the law of the latter State the action had been barred."

In Wharton's Conflict of Laws, 3rd Ed., Vol. 2, at page 1264, a clear statement is contained.

> "Assuming, however, that the time allowed by the foreign statute creating the cause of action has not expired, the plaintiff comes to the bar of the forum with a concededly existing cause of

> action; but it is not apparent why an action thereon does not, as in the case of an existing cause of action at common law, fall within the operation of the general principle that the limitation of actions is goverened by the law of the forum."

The principle is well summarized in Goodrich on Conflict of Laws, Par. 86, p. 171, wherein it is said:

> "Suit on a cause of action created by a statute thus limiting the right must, then, be brought within the time fixed by the law creating the claim. Suppose, however, that the lex fori created a cause of action under similar circumstances, but provides a shorter limitation period. It would seem that the plaintiff could not recover if his action was not within the limitation period set by the lex fori also. The right is not gone until it is lost under the law creating it. But the statute of the forum shows the local policy as to the time in which such actions are to be brought."

We earnestly insist that the South Carolina Statute is merely a time clock prescribing the period within which a litigant who has a right created under Sections 411 and 412 shall move to assert his rights; that it effects the remedy and is, in no way, a part of the right created. That the Legislative body of Tennessee may prescribe the time within which a resident of a sister State having a cause of action arising under the laws of the sister State may assert such rights in the Court of its own State; that by so doing, it, in no way, detracts from the right, but merely governs the time of its assertion.

Indeed, the Supreme Court of South Carolina, itself, holds that the law of the forum on a cause of action in a sister State will control. Sawyer vs. Macauley, 18 South

Carolina, 543. While this case does not involve a wrongful death Statute, it does announce the policy of the Courts of that State.

Such principle has been definitely adhered to in numerous decisions. In the case of Tieffenbrum vs. Flannery, 198 N.C. 397, the Supreme Court of that State was considering a cause of action for wrongful death occurring in Florida. The suit was instituted in North Carolina. The Florida Statute allowed two years for bringing suit. The North Carolina Statute allowed only one year. Upon consideration, the Court held that the limitation of the forum would control, saying:

> "It is a general rule declared in the text books and in decisions of appellate courts that statutes of limitations, being procedural in nature and working upon the remedy, govern the cause of action in the particular forum in which such cause of action is asserted. In other words, the statute of limitations of the place of trial, or lex fori, governs the action. *
>
> All statutes of limitations are essentially time clocks, and while Consol. Stat. Par. 160, has been construed as a condition annexed to the cause of **action**, it is also a time **limit to the procedure.** At all events, it is a legislative declaration of the policy of this state, providing in express and mandatory language that no action for wrongful death shall be asserted in the courts of this state after the expiration of one year from the time of death. Certainly, it is not to be supposed that the legislative department intended to confer upon non-residents more extensive rights in the courts than accorded to citizens of this state."

To the same effect see Rosenzweig vs. Heller, supra; White vs. Govatos, 10 Atl. (2d.) 524; Minor Conflict of

Laws, Section 10; Restatement of the Law, Conflict of Laws (American Law Institute), Section 433.

In the case of Sylvia Cauley vs. S. E. Massengill Company, 35 Fed., Supp., 371, the District Court had before it the applicability of the Statute of Limitations of the State of Florida. Florida's limitation was two years, and the Tennessee limitation, of course, one year. The suit was within the two years, but outside the one year period. In holding that the limitation of the forum controlled the action, the Court there said:

> "I cannot accept the reasoning in the cases which decide that the lex loci, which creates a right not known to the common law, and conditions the right upon its exercise within a period longer than that granted by the lex fori, couples the period of limitation with the right created by the statute so as to make the lex loci, applicable in states which fix a shorter period of limitation for the same cause of action."

II

IT IS ELEMENTARY THAT A FEDERAL DISTRICT COURT, IN THE ABSENCE OF A CONTROLLING FEDERAL STATUTE, SHOULD APPLY THE STATUTE OF LIMITATION OF THE LOCAL STATE.

> Griffin vs. McCoach, 313 U.S. 498; Campbell vs. Haverhill, 155 U.S. 610; Klaxon Company vs. Stenton Electric Mfg., 313 U.S. 450.

III

THE JUDGMENT AND OPINION OF THE CIRCUIT COURT OF APPEALS IN THIS CASE IS IN CONFLICT WITH THE DECISIONS OF THE CIRCUIT COURT OF APPEALS OF THE EIGHTH CIRCUIT; OF THE CIRCUIT COURT OF APPEALS OF THE SEVENTH CIR-

CUIT; OF THE CIRCUIT COURT OF APPEALS OF THE SECOND CIRCUIT; OF THE CIRCUIT COURT OF APPEALS OF THE FIRST CIRCUIT, AND OF THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The cases which we deem are conflicting with the holding of the Circuit Court in this case have been set out and discussed in the petition, and, for brevity, will not be here repeated.

We think the Court fell into error in assuming that the South Carolina Statute of Limitation, Section 413, supra, constituted a part of the right created under the laws of South Carolina, and, consequently, that it must be given effect in the Court of sister States.

The Court relied heavily upon the case of Theroux vs. Great Northern Railway Co., 64 Fed. 84 (C.C.A. 12, p. 52). In fact, it is said by the Court in its opinion:

> "In a case decided today, Nick Maki v. George R. Cooke Company, ... F. (2d)—(C.C.A. 6), this court approved, applied and extended the doctrine of Theroux v. Great Northern Railway Co., 64 Fed. 84 (C.C.A. 8), that where, by statute, a state creates a cause of action for death by wrongful act and prescribes in the same statute a limitation period for action, such limitation will be applied in the forum of a sister state, even though the period of limitation for like actions in the latter state is shorter. We apply that principle here." R. 23.

In the Maki vs. George R. Cooke Co., case, 124 Fed. (2d.) 633, referred to by the Court as controlling in the present case, the Court had given force to a six year Statute of Limitations of the State of Minnesota applicable to all statutory causes of action arising in that State. It

was held that such six year Statute would be carried into the State of Michigan and there given force to the exclusion of the three year Statute of the State of Michigan in an action for damages arising in Minnesota, which suit was instituted within the six years but beyond the three year period.

These decisions of the Sixth Circuit, considered as a whole, apparently, are to the effect that a time limitation contained in a statutory cause of action of a sister State is to be given force in the forum State to the exclusion of a time limitation in the forum State. This would seem to be in conflict with the holding of this Court in cases heretofore cited to the effect that States may, by Statute, regulate the time within which litigants of foreign States may prosecute their cause of action in the forum States.

The conflict of the Theroux case with the decisions of other Circuit Courts has been heretofore pointed out. The Theroux case was instituted in Minnesota having a two year Statute of Limitations, on a cause of action arising in Montana having a three year Statute. The action was commenced within the three year, but outside the two year period. The Minnesota Statute, the forum State, **applied only to causes of action arising in Minnesota.** The Court, itself, pointed this out by saying:

> "Moreover, it cannot be said that, by entertaining the suit after the lapse of two years, the laws of Minnesota would be set at naught, or any well-defined public policy of that state violated; for, in contemplation of law, the two year limitation prescribed by the statute of that state (chapter 77, Par. 2, supra) was only intended to apply, and can only apply, to causes of action which originate in that state, and not to causes of action that originate elsewhere."

It is true that the Court holds that the limitation is a part of the right and follows the action to the forum State. This, however, was in the nature of **dicta,** as the case could have been decided upon the proposition that the Minnesota Statute was confined to the limits of its own State.

The Theroux case was grounded upon certain other cases. An examination of the cases cited as authority show only that the limitation contained in a statute creating the right limited the right. Each of those cases, so far as examined by us, show that the defense was made in the forum State, that the plaintiff had no cause of action in the sister State **because of the expiration of the time limitation in the statute creating the right.** The Theroux case, for the first time, undertakes to extend these decisions so as to carry the limitation into the forum State and to have it **supplant the limitation of the forum State.** This is disclosed by examination of the cases cited, some of which are: The Harrisburg, 119 U.S. 199, where suit for damages for wrongful death upon the high seas, more than one year after the cause of action occurred in Massachusetts, was instituted in Pennsylvania. Both States limited the time to one year, and the Court properly held the action barred; Munos vs. Southern Pacific Co., 51 Fed. 188, was an action for damages for wrongful death in the territory of New Mexico having a limitation of one year, the suit being instituted in Texas, likewise having a limitation of one year, the action being brought almost three years after the death. The Court properly held the action barred. It is to be noted that this decision was based upon the limitation of the forum State; Boyd vs. Clark, 8 Fed. 849, was an action for death occurring in the province of Ontario, which had a limitation of one year,

and the suit was instituted in Michigan more than one year afterwards, but apparently within the time allowed by the forum State. The limitation plea was defensive, and the Court held that plaintiff did not come to Michigan with a cause of action; that it was barred under the limitation of Ontario, saying: "such limitation is operative in any other jurisdiction wherein the plaintiff may sue."

The State decisions referred to in the Theroux case are not analysized, but as far as examined, adhere to the same principle. **It is to be noted that in each of the cases relied upon in the Theroux case, plaintiff's cause of action had expired by the limitation laws of his own State before he instituted suit in the forum State.**

The learned Circuit Court of Appeals in the Maki case, supra, refers to Engel vs. Davenport, 271 U.S. 33, where an action was instituted in California to recover damages for personal injuries, the action being grounded under the Merchant Marine Act, and was instituted more than one year, but within the two years. California's limitation for such action was one year. The Merchant Marine Act, as construed by the Supreme Court, allowed such suits within two years. The Court held that the limitation in the Merchant Marine Act was part of the right and would be applied in the Courts of any State where suit was instituted, saying, "as a provision affecting the substantive right created by Congress in the exercise of its paramount authority in reference to the maritime law, it must control an action brought in a State Court under the Merchant Marine Act, regardless of any Statute of Limitations of the State." This was all the Supreme Court held, or intended to hold in such case. It is emphasized by the Circuit Court of Appeals for the Sixth Circuit in the case

of Louisville & N.R. Railroad Co., vs. Cory, 54 Fed. (2d.) 8, wherein the Court said:

> "Just as a state may not fix a shorter period of limitation than that prescribed by Congress within the domain of its exclusive authority (Engel v. Davenport, 271 U.S. 33, 46 S. Ct. 410, 70 L. Ed. 813), so no State may fix a longer period than that prescribed by Congress. Compare, also, Arnson v. Murphy, 109 U.S. 238, 243, 3 S. Ct., 184, 27 L. Ed. 920."

It also cites the case of Davis vs. Mills, 194 U.S. 451. In that case the Court said:

> The Courts have been willing to treat the limitations of time as standing like other limitations, **and cutting down the defendant's liability wherever he is sued."** (Italics ours.)

The case of Keep vs. National Tube Co., 154 Fed. 121, was instituted in New Jersey on a cause of action arising in Minnesota. The Court gave force to the limitation of Minnesota rather than the forum State for the reason that the New Jersey limitation statute applied only to causes of action in New Jersey and not to causes of action arising in other States.

A study of the several cases, we think, shows that confusion exists among the Courts of the several Circuits to such an extent that the holding of the Sixth Circuit in the present case should be reviewed by this Court and a true principle announced.

The true rule, we think, is stated in Restatement of the Law, Conflict of Laws (American Law Institute) Section 433, where it is said:

> "A limitation of time for bringing suit contained in the death Statute of the place of

wrong is binding in every State and no State will allow recovery on Statutes **after the time has elapsed."** (Italics ours.)

Again, stated in the same text, Section 605,

"If by the law of the State which has created a right of action, it is made a condition of the right that it shall expire after a certain period of limitation has elapsed, **no action begun after the period has elapsed can be maintained in any State."** (Italics ours.)

The limitation laws of the State creating the action giving a longer time than the limitation laws of the forum State should not be carried into the forum State and supersede and exclude the application of the forum laws. The litigant should come to the forum State with a live cause of action under the laws of his State, and must proceed in the forum State within the time accorded him by the laws of the forum State.

IV

THE DECISION OF THE CIRCUIT COURT OF APPEALS INVOLVES IMPORTANT QUESTIONS OF LOCAL LAW, AND IS IN CONFLICT WITH THE APPLICABLE LOCAL DECISIONS OF THE SUPREME COURT OF TENNESSEE.

The cases of Gassaway, et al, vs. Hopkins, et al, 38 Tenn., 533; Barbour vs. Erwin, 82 Tenn., 721; Fitzsimmons vs. Johnson, 90 Tenn., 443, and Hartman vs. Duke, 160 Tenn., 137, have been heretofore cited in the petition and are in conflict with the holding of the Circuit Court of Appeals. These cases definitely announce the policy of the Courts of Tennessee on causes of action originating in

sister States. It is very aptly stated in Gassaway vs. Hopkins, supra,

> "Each State has the right to settle the time within which suits must be brought or may be litigated in its own Courts. Hence, the law of the State where a suit is instituted, without regard of where the cause of action originated, governs, as to the defences upon prescription, or limitation of actions."

If a limitation under the laws of the sister State giving a longer period for instituting suit than does the law of Tennessee on the same cause of action, was given effect, then **the rights of citizens of Tennessee would be invaded.**

It is said by the learned Court of Appeals that the question was pretermitted in the case of Parsons vs. American Trust & Banking Co., 168 Tenn., 49. The Court gave effect to the one year Statute of Tennessee, however, saying:

> "In our opinion, the action was brought within one year from the date the cause of action accrued." Parsons vs. American Trust & Banking Co., supra, 58.

Since the action was instituted within the time required by the forum State, as well as the time required by the sister State, there was no occasion for passing upon the question.

The Tennessee Statute of Limitations, Section 8595, Appendix I to the petition, requires suits for injuries to the person to be instituted within one year after the cause of action accrued, and is contained in a controlling clause of the Code prescribing limitation for civil actions. Code Section 8592, Appendix 1 to petition.

The Statute of Tennessee giving the right to recover damages for wrongful acts causing death is Section 8240 of the Tennessee Code, and the survival of action is provided for in Section 8236 of the Tennessee Code, Appendix 1 to petition.

Our Supreme Court holds that the limitation of twelve months applies to actions grounded on negligence where death was instantaneous. In the case of Fowlkes vs. Railroad Co., 64 Tenn., 663 (667), where argument to the contrary was made, the Court said:

> "This argument, though plausible, is not sound. As we have seen, the statute is equally applicable to cases where the injured party lives a time, and to cases where death is instantaneous."

The same principle is adhered to by later decisions of the forum Court. Trafford vs. Adams Express Co., 76 Tenn., 107; Whaley vs. Catlett, 103 Tenn., 355; Whitson, Admr., vs. T. C. Ry. Co., 163 Tenn., 38. In the latter case, in an action for wrongful death, the Court said:

> "The right of action is subject to the Statute of Limitations of one year." Whitson vs. Railway Co., supra.

While the learned Court of Appeals observes that certain differences exist in the South Carolina Statute and the Tennessee Statute, the causes of action are essentially the same. The fact that the Tennessee action is referred to by the Courts as a survival action would seem to be of no importance.

A comparison of the Statutes of Tennessee with those of South Carolina controlling the nature of the action discloses that they are very similar.

In the Tennessee Statute, it is provided:—

"The right of action which a person who dies from injury received from another, or whose death is caused by the **wrongful act, omission, or killing by another** would have had against the wrongdoer in case death had not ensued, etc., * * *." (Italics ours.) Tennessee Code, Section 8236.

The South Carolina Statute provides:—

"Whenever the death of a person shall be caused by the **wrongful act, neglect** or **default of another,** and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, etc., * * * * * * *." (South Carolina Code, Section 411,) (Italics ours.)

It will be observed that the cause of action given by such Statutes is for the **wrongful act** resulting in death. The death of the injured person itself, is not what gives rise to the right to maintain the action, but in both cases, it is the wrongful act, neglect, default or misconduct of the wrongdoer inflicting the injury causing death.

The Supreme Court of this State has said:—

"The foundation of the action is a wrongful act, resulting in the death of another." Parsons vs. American Trust & Banking Co., supra, 53.

In Tennessee, the action may be instituted by the personal representative of the deceased, or by the widow in her own name. Tennessee Code, Section 8237.

In South Carolina, the suit may be brought in the name of the Executor or Administrator for the use and benefit of the husband, child, or children, etc., South Carolina Code, Section 412.

In Tennessee, damages for the personal injury to the deceased, if any, and damages to the widow, children or next of kin resulting from the death, are recoverable in one action.

In South Carolina, such damages are recoverable in two separate suits—the one for personal injury to the deceased, and the other for damages caused by the wrongful act resulting in death.

In each case, however, the same measures of damages applies. Tennessee Code, Section 8240; South Carolina Code, Section 412.

Under both Statutes, damages resulting from a wrongful act causing death are recoverable. The substance is the same, and whether it be referred to as a survival statute, or a wrongful death statute, would seem to be immaterial.

The State of Florida has a death Statute, and in the case of Parsons vs. American Trust & Banking Co., supra, our Supreme Court very pertinently remarked:

> "The Courts in this State have consistently adhered to the principle that the law of the place where a wrong is committed must determine the rights of the parties affected by such wrong.*****
> * * * * * * * * * *
> The law of Florida, giving the widow the right to demand compensatory damages for such wrongful act, is in strict accord with the law of Tennessee."

V

THE DECISION OF THE CIRCUIT COURT OF APPEALS IS, APPARENTLY, IN CONFLICT WITH THE DECISIONS OF THIS COURT.

The apparent conflict is pointed out in the petition. The case of Platt vs. Wilmot, 193 U.S. 602, is applicable.

VI

THE CIRCUIT COURT OF APPEALS HAS SO DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND APPLICATION OF STATUTES AS TO CALL FOR THE EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

The conflict and confusion existing in the decisions of the Courts of the several Circuits, the Courts of the different States, and the District Courts, has been heretofore pointed out. The decision in the present case only serves to accentuate the conflict and confusion. This Court, by granting the certiorari, can determine whether the law of the forum State or the law of the sister State will control under the factual situation here presented.

We submit that where the Statute of the sister State creating a cause of action also contains a Statute limiting the time for exercising the right, that such period of limitation will not be carried into the forum State where a Statute of that State limits the time for instituting such suit to a shorter period so as to supplant and exclude the application of the limitation of the forum State.

It is therefore respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

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